



February 20, 2007

## HOUSE BILL No. 1459

DIGEST OF HB 1459 (Updated February 14, 2007 4:50 pm - DI 69)

**Citations Affected:** IC 34-24; IC 35-38; IC 35-46; IC 35-50; noncode.

**Synopsis:** Bias crimes. Allows a person who suffers a personal injury or property damage caused by a criminal offense to bring a civil action to recover damages, including punitive damages, if the person who committed the offense knowingly or intentionally selected the victim because of the victim's color, creed, disability, national origin, race, religion, sexual orientation, gender identity, or sex. Makes commission of a crime because of the color, creed, disability, national origin, race, religion, sexual orientation, gender identity, sex, or any other characteristic or belief of the victim an aggravating circumstance that may be considered by a judge when the judge imposes a sentence for the crime.

**Effective:** July 1, 2007.

**Porter**

January 23, 2007, read first time and referred to Committee on Courts and Criminal Code.  
February 19, 2007, amended, reported — Do Pass.

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HB 1459—LS 7816/DI 69+



February 20, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE BILL No. 1459

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2007]:

4 **Chapter 5. Civil Action for Victims of Bias Crime Offenders**

5 **Sec. 1. As used in this chapter, "bias crime offender" means a**  
6 **person:**

7 **(1) who:**

- 8 **(A) committed an offense that injured an individual; and**  
9 **(B) knowingly or intentionally selected the individual as**  
10 **the victim of the offense because of the color, creed,**  
11 **disability, national origin, race, religion, sexual orientation,**  
12 **gender identity, or sex of the individual; or**

13 **(2) who:**

- 14 **(A) committed an offense that damaged or otherwise**  
15 **affected property; and**  
16 **(B) knowingly or intentionally damaged or otherwise**  
17 **affected the property because of the color, creed, disability,**

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national origin, race, religion, sexual orientation, gender identity, or sex of the individual who owned or occupied the property.

**Sec. 2. If a person suffers a pecuniary loss because of the commission of an offense by a bias crime offender, the person may bring a civil action against the person that caused the loss.**

**Sec. 3. A person bringing an action under section 2 of this chapter may seek to recover the following:**

- (1) Actual and consequential damages.**
- (2) Punitive damages in an amount not more than three (3) times the person's actual damages.**
- (3) The costs of the action.**
- (4) Reasonable attorney's fees.**

**Sec. 4. A person may not recover damages under IC 34-24-3 and this chapter for the same offense.**

SECTION 2. IC 35-38-1-7.1, AS AMENDED BY P.L.213-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances:

- (1) The harm, injury, loss, or damage suffered by the victim of an offense was:
  - (A) significant; and
  - (B) greater than the elements necessary to prove the commission of the offense.
- (2) The person has a history of criminal or delinquent behavior.
- (3) The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.
- (4) The person:
  - (A) committed a crime of violence (IC 35-50-1-2); and
  - (B) knowingly committed the offense in the presence or within hearing of an individual who:
    - (i) was less than eighteen (18) years of age at the time the person committed the offense; and
    - (ii) is not the victim of the offense.
- (5) The person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.
- (6) The person has recently violated the conditions of any

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probation, parole, pardon, community corrections placement, or pretrial release granted to the person.

(7) The victim of the offense was mentally or physically infirm.

(8) The person was in a position having care, custody, or control of the victim of the offense.

(9) The injury to or death of the victim of the offense was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(10) The person threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense.

(11) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9; and

(B) is an employee of the penal facility.

**(12) The person who committed the offense knowingly or intentionally:**

**(A) selected the individual who was injured by the offense; or**

**(B) damaged or otherwise affected property by the offense; because of the color, creed, disability, national origin, race, religion, sexual orientation, gender identity, sex, or any other characteristic or belief of the injured individual or of the owner or occupant of the property.**

(b) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

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(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(c) The criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.

(d) A court may impose any sentence that is:

(1) authorized by statute; and

(2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

SECTION 3. [EFFECTIVE JULY 1, 2007] IC 35-38-1-7.1, as amended by this act, applies only to offenses committed after June 30, 2007. IC 34-24-5, as added by this act, applies only to causes of action that accrue after June 30, 2007.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1459, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 20, delete "or".

Page 3, line 20, after "sex" insert ", **or any other characteristic or belief**"

Page 4, delete lines 16 through 42.

Delete pages 5 through 8

Page 9, delete lines 1 through 22.

Page 9, line 24, delete "IC 35-46-2-1, IC 35-46-2-2, and IC 35-50-2-9, all".

Page 9, line 25, delete "apply" and insert "**applies**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1459 as introduced.)

HOY, Chair

Committee Vote: yeas 9, nays 1.

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